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Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STEVEN FRIEDMAN and	)	CASE NO.: CV 15-0844 JEM
FSZ MEDIA, LLC,	)	
	)	
Plaintiffs,	)	
	)	<b>JOINT REPORT PURSUANT TO</b>
v.	)	<b>FED. R. CIV. PROC. 26(f)</b>
	)	
DIRECTV, a Delaware corporation;	)	
DIRECTV HOLDINGS, LLC, a	)	
Delaware limited liability company;	)	Action Filed: February 05, 2015
and DOES 1 through 10, inclusive,	)	Trial Date: None Set
	)	
Defendants.	)	
	)	

1 Pursuant to Federal Rule of Civil Procedure 26(f) and Central District Local Rule  
2 26-1, counsel for Plaintiffs Steven Friedman and FSZ Media, LLC (collectively,  
3 “Plaintiffs”) and counsel for Defendants DIRECTV and DIRECTV HOLDINGS, LLC  
4 (collectively, “DIRECTV”) held an early meeting of counsel on April 3, 2015. The  
5 parties respectfully submit the following joint Rule 26(f) report.

6  
7 **1. Subject Matter Jurisdiction**

8 Subject matter jurisdiction is proper in this case based on diversity of citizenship,  
9 28 U.S.C § 1332.

10  
11 **2. Statement of Claims and Defenses**

12 **Plaintiffs’ Statement**

13 Plaintiffs allege they created a detailed concept and business plan for a proposed  
14 television channel known as “Fantasy Sports Zone” that would be dedicated entirely to  
15 fantasy sports covering the entire United States. Between 2012 and 2013, Plaintiffs  
16 presented the idea for sale to DIRECTV, orally and in writing. DIRECTV’s executives  
17 repeatedly assured Plaintiffs that DIRECTV had never been pitched or considered such a  
18 concept nor was it working on a similar idea at the time. Relying on these assurances,  
19 and upon DIRECTV’s request, Plaintiffs developed and submitted for DIRECTV’s  
20 consideration, a business plan, powerpoint presentation, market data report, and even a  
21 sample episode of the show. Plaintiffs and several DIRECTV high-level executives met  
22 and spoke throughout 2013 to discuss Plaintiffs’ concept. Terms of a contract were  
23 presented and negotiated, and the parties made plans for the launch. However, on  
24 February 12, 2014, Plaintiffs were suddenly and unexpectedly notified that DIRECTV  
25 was passing on the “Fantasy Sports Zone” concept because it felt fantasy sports was more  
26 of a web-based commodity. However, on or about July 7, 2014, DIRECTV issued a press  
27 release announcing the launch of its own “Fantasy Zone Channel” which is a wholly  
28 owned channel dedicated to fantasy football across the United States. Based on the

1 foregoing facts, Plaintiffs assert four causes of action against DIRECTV: (1) Breach of  
2 Implied-In-Fact Contract; (2) Breach of Confidence; (3) Fraud; and (4) Negligence.

### 3 **DIRECTV's Statement**

4 Plaintiffs' complaint alleges that DIRECTV used Plaintiffs' ideas for a fantasy  
5 sports television network – Fantasy Sports Zone (“FSZ”) – to create DIRECTV's  
6 *Fantasy Zone Channel*. Plaintiffs further allege that DIRECTV made misrepresentations  
7 to Plaintiffs in 2013 regarding whether DIRECTV was working on a fantasy sports  
8 network like FSZ in order to induce Plaintiffs to share their ideas for FSZ. Plaintiffs'  
9 claims are without merit. The undisputed evidence will demonstrate that the concept for  
10 *Fantasy Zone Channel* had been in consideration since 2004 and the *Fantasy Zone*  
11 *Channel* was independently created and developed by DIRECTV, with the assistance of a  
12 third-party consultant, based upon DIRECTV's already popular NFL-based *Red Zone*  
13 *Channel*. The independent creation of *Fantasy Zone Channel* is dispositive of Plaintiffs'  
14 claims for breach of implied contract and confidence.

15 The evidence will also demonstrate that aside from the fact that DIRECTV's  
16 *Fantasy Zone Channel* and Plaintiffs' proposed FSZ network both involve fantasy sports  
17 on a generic level, DIRECTV's program and Plaintiffs' proposed network are almost  
18 entirely unlike. FSZ was contemplated to be a 24/7, year-round fantasy sports network  
19 that covered all fantasy sports (e.g., NFL football, NCAA football, NBA basketball, MLB  
20 baseball, PGA tour, NASCAR). *Fantasy Zone Channel*, by contrast, focuses on *only*  
21 NFL football; it airs on *only* Sundays during the NFL season and *only* during the time  
22 period during which NFL games are being played on that day; and it is available *only* to  
23 subscribers to DIRECTV's NFL Sunday Ticket Max package. DIRECTV therefore did  
24 not use Plaintiffs' ideas in any manner.

25 Finally, the undisputed evidence will demonstrate that precisely because Plaintiffs'  
26 proposed FSZ network was so significantly different from the *Fantasy Zone Channel*,  
27 DIRECTV considered Plaintiffs' concept in good faith and honestly represented to  
28 Plaintiffs that DIRECTV was not working on a similar network.

DIRECTV intends to file Special Motion to Strike Plaintiffs' Complaint pursuant to Cal. Civ. Proc. Code § 425.16 on the grounds that: (1) the alleged conduct by DIRECTV upon which Plaintiffs' claims are based was in furtherance of DIRECTV's exercise of free speech and involved a matter of public interest; and (2) Plaintiffs are unlikely to prevail on their claims for the reasons set forth above.

### **3. Joint Proposed Schedule**

Deadline to file Special Motion to Strike (Anti-SLAPP)	April 28, 2015
Deadline to Add Parties or Claims	October 9, 2015
Fact Discovery Cutoff	November 13, 2015
Deadline for Expert Disclosures	December 11, 2015
Deadline for Rebuttal Expert Disclosures	January 12, 2016
Last Day to Hold Expert Depositions	February 12, 2016
Last Day to Hear Dispositive Motions	January 29, 2016
Last Day to Hear Pre-Trial Motions	February 26, 2016
Final Pre-Trial Conference	March 18, 2016
Trial	April 4, 2016 <sup>1</sup>

### **4. Discovery Plan**

Plaintiffs intend to serve requests for admission, interrogatories, and document requests. Plaintiffs will need to take depositions of DIRECTV's employees and representatives and, potentially, third parties. DIRECTV intends to serve requests for admission, interrogatories, and document requests. DIRECTV will need to take depositions of Plaintiffs' principals and, potentially, third parties. A litigation hold has

<sup>1</sup> The Parties have submitted a proposed schedule in compliance with Rule 26. However, as mentioned above, DIRECTV **plans** to file a Special Motion to Strike Plaintiff's Complaint ("Motion"), from which either party has an automatic right to appeal. As such, any ruling on the Motion will likely trigger an appeal by the unsuccessful party, resulting in the vacating of any trial-related deadlines.

1 already been put in place to preserve documents and other electronically stored  
2 information.

### 3 4 **5. Trial**

5 Both sides are requesting a trial by jury. The parties estimate the evidence phase  
6 of the trial will last 14 days, six days for the case-in-chief presented by Plaintiffs, six days  
7 for DIRECTV's defense, and two days for jury selection, opening statements, and closing  
8 arguments. The name of the trial attorney for Plaintiffs is Glen L. Kulik. The name of  
9 the trial attorney for DIRECTV is David Halberstadter.

### 10 11 **6. Settlement**

12 During the initial conference, the parties agreed to extend by two weeks the time  
13 for DIRECTV to file a Special Motion to Strike Plaintiffs' Complaint pursuant to Cal.  
14 Civ. Proc. Code § 425.16 so that the parties may consider Defendants' independent  
15 creation evidence. The Court entered an order upon the parties' stipulation. If  
16 appropriate, settlement negotiations will follow the exchange of this independent creation  
17 evidence.

### 18 19 **7. Complex Case**

20 The parties agree that this is not a complex matter.

### 21 22 **8. Additional Parties**

23 The parties do not currently anticipate joining any additional parties. However,  
24 should additional defendants be identified during discovery, Plaintiff reserves the right to  
25 add additional parties based upon newly discovered evidence.

1           **9. Contemplated Motions**

2           Special Motion to Strike Plaintiffs' Complaint (Anti-SLAPP Motion).

3           Motion for Summary Judgment by Defendants.

4  
5           **10. Unusual Legal/Evidentiary Issues**

6           The parties do not foresee any unusual legal or evidentiary issues presented by this  
7 case.

8  
9           **11. Severance, Bifurcation, and Order of Proof**

10          The parties do not presently believe that severance or bifurcation of any issue is  
11 necessary in this action.

12  
13          **12. Expert Witnesses**

14          Except as otherwise provided above, the parties do not, at present, anticipate any  
15 need to provide for expert scheduling rules any different than those specified in Rule  
16 26(a)(2)(c).

17  
18          **13. Rule 26(f)(1) Arrangement for Disclosures Required by Rule 26(a)(1)**

19          Pursuant to Federal Rule of Civil Procedure 26(a), and by agreement of the parties,  
20 initial disclosures will be exchanged by April 17, 2015.

21  
22          **14. Rule 26(f)(3) Subjects on Which Discovery May Be Needed**

23          The parties anticipate that discovery will encompass the following topics:

- 24          a.     The creation, if any, of an implied-in-fact contract between the parties;  
25          b.     The alleged breach of contract by DIRECTV;  
26          c.     Whether Plaintiffs presented the fantasy sports television network concept to  
27                 DIRECTV and/or third parties;  
28

- d. Communications between Plaintiffs and DIRECTV regarding Plaintiff's fantasy sports television network;
- e. The value of Plaintiffs' fantasy sports television network concept;
- f. Plaintiffs' damages, if any, as a result of the alleged breach;
- g. DIRECTV's defenses, including the defense of independent creation and lack of substantial similarity.

The parties anticipate that additional subjects may arise during the course of discovery and hereby reserve the right to augment the subjects listed above.

#### **15. Rule 26(f)(3) Discovery of Electronically Stored Information**

For the time being, the parties agree to produce documents in hard copy form. If either party has voluminous records responsive to discovery requests, or if discovery is needed in different formats, the parties will discuss the form of production at that point. The parties agree to consider providing documents in their native format if the discovery requested is voluminous and/or production in hard copy format is impracticable for the producing party.

#### **16. Rule 26(f)(5) Proposed Changes to Discovery Limitations**

Except as otherwise provided above, there are no proposed changes to the existing discovery limitations other than those proposed herein.

#### **17. Rule 26(f)(6) Other Orders the Court Should Enter**

The parties intend to stipulate to a protective order governing confidential information to be exchanged in discovery. To the extent that financial information regarding the parties' businesses, revenues or profits are exchanged, such information is

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1 competitively sensitive and confidential and will be the subject of confidentiality  
2 pursuant to the parties' stipulated protective order.

3  
4 Dated: April 16, 2015

KATTEN MUCHIN ROSENMAN LLP

5  
6 By: /s/ Gloria Franke Shaw  
7 Gloria Franke Shaw  
8 Attorney for Defendants  
9 DIRECTV and DIRECTV Holdings, LLC

10 Dated: April 16, 2015

KULIK GOTTESMAN & SIEGEL, LLP

11  
12 By: /s/ Glen L. Kulik  
13 Glen L. Kulik  
14 Attorney for Plaintiffs  
15 Steven Friedman and FSZ Media, LLC  
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